IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4011 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DIPAKLAL ISHWARLAL JARIWALA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4011 of 2002

MR NM KAPADIA for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/06/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 16.2.2002 passed against him by the

Commissioner of Police, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu, branding the detenu as "bootlegger".

2. The detaining authority has recorded subjective satisfaction that the activities of the detenu is adverse to public order and to public health. The detenu was involved in two criminal cases and was found involved in other two unregistered offences which has taken place on 26.11.2001 and 8.12.2001 in the city of Surat.

3. According to Mr. Kapadia, ld. counsel appearing for the petitioner, that the order of detention is bad in law and is in violation of the constitutional guarantee enshrined under Article 22(5) of the Constitution of India on more than one grounds and hence the same requires to be quashed and set aside. The petitioner has challenged the legality and validity of the order and his continued detention on number of grounds mentioned in the petition. However, ld. counsel Mr. Kapadia has mainly focussed his arguments on one ground mentioned in para-20 of the petition. It is submitted that all the documents considered by the detaining authority for recording subjective satisfaction were not supplied to the detenu. The order of detention was passed on 16.2.2002 and same was executed on 18.2.2002. Order of detention has been approved by the State Government thereafter on 22.2.2002. Considering this eventuality, the detenu made representation to the Secretary, Home Department viz. State Government on 3.4.2002 submitting therein that detaining authority had not supplied many documents relevant for passing the order of detention when the grounds were served to him and that order of detention is passed and executed without supplying relevant documents and hence the same should be declared illegal and bad in law. Copy of the reply received by the detenu through Police Commissioner, Surat City dated 20.4.2002 indicates that copy of the representation made to the State Government must have been sent to the Police Commissioner and, therefore, demand made by the detenu has been responded by the Police Commissioner on behalf of the State Government and/or at the instance of the State Government. Considering the demands made in the representation dated 3.4.2002 and reply received by the detenu through Police Commissioner, Surat City, it clearly reveals that reply given by the Police Commissioner is evasive and it amounts to denial. Impliedly, this reply also indicates that all relevant documents mentioned in representation dated 3.4.2002 were in fact not supplied to the detenu. Copy of the

complaint filed under Section 177 of IPC was also not supplied to the detenu. Considering the vague and evasive reply dated 20.4.2002 received by the detenu which is brought on record and considering the substantive demands made in the representation dated 3.4.2002, it can legitimately be concluded that this is a case where detenu has not been supplied all relevant documents on the basis of which order of detention has been passed and thus is deprived of his right to make an effective representation enshrined under Article 22(5) of the Constitution of India and order of detention cannot sustain solely on tis ground and requires to be quashed and set aside. Since, order of detention is quashed solely on the sole ground of non-supply of relevant documents, the other grounds canvassed by ld. counsel appearing for the detenu do not require to be considered.

4. For the reasons aforesaid, this petition is allowed. The order of detention dated 16.2.2002 passed by Police Commissioner, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

27-6-2002 [C. K.BUCH, J]
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